1913
(Courts)

Rev No. 76-13
Sl No. 1-2

Memorial of Khalandar Sheb and four others accused of Murder Sentenced, the first four to deaths, and the last to transportation for life, praying for mercy

Previous references.

Later references.

File No. 76-13

Serial Nos. 1-2

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-2

Part B. for October 13

SUBJECT.

Memorial of Khalander Sab and four others accused of murder and sentenced the first four to death and the last to transportation for life.

Table of contents

1) From the Registrar of Court No-818/71 Dt 19-8-13 forwards the memorial along with the entire record of the case

2) To the Registrar of Court No 1199 Dt 18-10-13 forwarded for information of the Judges of the Ct Court and for communication to prisoners Khalander Sab and four others, a copy of the order passed by Hon'ble High Court rejecting the commutation of death into transportation for life in the case of 3rd & 4th accused and rejecting the memorial in the case of others.

O. R. S. 58

19-12-13

G.R.S. 11] 1913-14

GENERAL AND REVENUE SECRETARIAT.

(Courts)

NOTES.

File No. 76

FILE HEADING.

Memorial of Khalander Sab and four others, accused of murder and sentenced the first four to death and the last to transportation for life

From

The Registrar, Chief Court

No. 818/71 Dated 19.8.13 Received 21.8.13

Diary No. J657	Enclos. 2 1 record Spare Copies.	Serial No. 1

BRIEF ABSTRACT OF LETTER.

Forwards the memorial alongwith the entire record of the case.

NOTES AND ORDERS.

Submitted. [A petition addressed by one Hashabi, a relation of the accused persons is also subd in the linked file].

Hy.-129, 1911

22.8.13

The present memorial is from the five accused persons who were

NOTES—First Sheet.

GPB—30,000—12-8-11

convicted, by the Sessions Judge, Mysore Dn, of the offence of murder & sentenced as follows: 1st, 2nd, 3rd & 4th accused to death & the 6th accused to transportation for life. The conviction & sentences have been confirmed by the Chief Court.

The facts of the case have been narrated in great detail by the Sessions Judge in his Judgment and may be briefly summed up now:

The deceased person one Channa Lingayya, an ~~postperson~~ employee of the Postal Dept had a house & lands in a village very close to Hassan town, inherited by him from his father who had given him 2/3rds of his property & the remaining 1/3rd to one Hanume Gowda, his brother-in-law. Owing to a decree obtained against him by the deceased, Hanume Gowda transferred his 1/3rd share of the properties to the name of the deceased's wife. The deceased & his wife found great difficulty in retaining possession of these lands, owing to the obstructive attitude of some of the accused persons who

NOTE—Contn. sheet.

G1E—65,000—17-6-12.

claimed to be the tenants of the land under a lease from one Chichamma. This land dispute which began about May 1912 was the main origin of the enmity between the deceased + his people and the accused. ~~others~~. In connection with this dispute, the deceased, his wife + mother-in-law were assaulted by some of the accused + complaints were laid by them before the Courts + the Police. As nothing was done on these complaints, the accused grew emboldened + some of them i.e accused nos 1, 2 + 4 threatened to murder the deceased + bring disgrace upon his family by violating the women. That the deceased + his people were greatly annoyed + threatened by the accused is conclusively proved by the large number of petitions sent by them to the local authorities praying for protection + help against the three ~~of~~ the accused viz 1, 2 + 4 The last petition of this kind, which is quite pathetic in its tone was written by the deceased on 14-1-13 7 days before

NOTE—Contn. sheet.

GIPE—65,000—17-6-12.

on the night of which day he was brutally hacked to death. Even during the inquest over his body, the deceased's wife & mother-in-law mentioned their suspicions against the accused & cited in corroboration of their statement, the long tale of the petitions they had sent to the Sirkar against the accused persons. After investigation of the case by the Police, the accused were tried by the Sessions Judge of the offence of murdering the deceased & convicted & sentenced as above stated.

5 The Chief evidence against the accused is that of one Niniga who had been granted pardon & turned as an approver. His story is that he was living in a shed close to the 2nd accused's & that he was asked by the accused to help them in murdering the deceased. Accordingly on the night of the 14th Jan 1913, they all lay in wait for him as he was proceeding towards Hassan, dragged him to the fields & there killed him with choppers &c. He is corroborated, in certain particulars

NOTE—Contn. sheet.

one boy Kimta who was accompanying the deceased when he was dragged away by the accused & by two other witnesses.

The approver's story is accepted as true by the assessors & the Sessions Judge; the Chief Court Judge state that they have read his evidence carefully & that there is no reason to discredit it. ~~An~~ They add that, if the approver's evidence is true, there is no doubt that the accused have all been rightly convicted.

The accused have now submitted a very lengthy memorial which ~~is not~~ looks like a summary of the arguments advanced at the bar by the Counsel on their behalf ~~of the accused~~. No new facts ~~have~~ or arguments are put forward; but the unreliability of an approver's evidence & the discrepancies in the evidence for the Pros^r are emphasised. On this question of discrepancies, the Chief Court state that the pleader for the defence could put forward only a few discrepancies,

NOTE—Contn. sheet.

of trivial importance. A careful perusal of the arguments contained in the memorial does not show any reason why the ~~interpretation~~ appreciation of the evidence by the Sessions Judge & the Chief Court should not be concurred in by Govt.

6 The murder was a particularly cold-blooded & deliberate one, premeditated & done to a fairly long standing feud. There No sufficient reason seems to exist for ~~exercising~~ interfering with the sentence of death passed on the 1st to 4th accused persons. The 5th accused is an old woman of about 60 years & has been sentenced to transportation for life.

9 As regards the last para of the Judt. of the Chief Court commenting on the apathy of the local Police & Magisterial authorities, a report has been separately called for from the Dt. Magte.

Submd & a draft

Dr Sastri (1st Consulter) 10

SOM 26/8 Draft after SOM 27/8

11 There is no doubt that the case is a true one and that

NOTE—Contn. sheet.

G. R. S. 12]

General and Revenue Secretariat.

File No. 76 of 1913

Serial No.

the memorialists are all properly convicted. Four persons have been sentenced to death; and if any grounds can be discovered to justify a difference being made among them, it is worth saving some waste of life. The 1st — 2nd accused seem to have been the original aggressors in the land dispute which seems to have ~~fully~~ culminated in this crime. The 2nd accused and the 5th seem to have actively engaged themselves in getting the deed done. The last two accused caught the deceased and dragged him away from the road; and the 2nd gave ~~a blow~~ the first blow. The other two seem to have played a subordinate part. I am of opinion that the sentence of death may be altered to one of imprt — for life

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

General and Revenue Secretariat.

Cb File No. 1 of 1913

Serial No.

in the case of the 3rd & 4th accused, Hawali Jeuda & Sheikh Mohdin. The memorial of the others may be rejected.

[The 4th accused is 22 years old; 1st & 2nd accused, 24 & 25 years old: 3rd Accd 40 yrs old & 5th Accd 63.]

5/9/13

(Please Circulate as it is a Council Case).

2nd Comalkin) 6/9

6/9

12) I am not prepared to commute the case of these prisoners for mercy - In my opinion, the learned Sessions Judge was quite right in the view he took of this diabolical murder & in the absence of any extenuating circumstances, the sentence awarded in this case is well deserved. The memorial deserves to be rejected.

Well

6/9

NOTE—Contn. sheet.

GPE—65,000—17-9-12.

9/9

(9

[illegible] R. S. 12]

General and Revenue Secretariat.

cb File No. 76 of 191 3-14

Serial No.	
5179 10.9.13	(13) The Chief Judge may kindly be consulted unofficially. 16.9.13. cb
	(14) Forwarded to the Registrar of the Chief Court unofficially for favour of obtaining the opinion of the Chief Judge in the matter. By order Malaiyappan for Secy to Govt
	16.9.13 Rec'd. 16/9/13.
No. 1377 III 20/9	(15) The file is retransmitted with the opinion of the Chief Judge. Malaiyappan 19th September 1913. Registrar Chief Ct

NOTE—Contn. sheet.

P.T.O.

GIP—85,000—17-6-12.

Opinion

16) It appears to me that there are not adequate grounds for making a distinction between the case of the 1st & 2nd accused on the one hand, and the third and fourth on the other. It is true that there is no evidence to show that these - latter dealt any blows to the deceased, but that circumstance does not, in any way, detract from their culpability. They readily consented to take part in the commission of the diabolical act thought of by the 1st & 2nd accused, and actively helped the latter in the commission of that act. But for the help rendered by them, it might not have been possible for the 1st & 2nd accused to drag the deceased by force from the public road along which he was passing with his attendant Kunta, to the field behind the 2nd accused's hut where he was murdered without being seen by any of the passers-by. It made no difference who sprang upon the deceased and pulled him forward and who pushed him from behind in order to take him to the spot intended for the perpatration of the crime. The fact that each was assigned a definite role was only a matter of arrangement. It is in evidence that the 3rd accused had a sickle with him at the time and that the 4th accused had a rope in his hand. There can be

little

little doubt that they intended to use these articles in case of necessity. So far as regards the 3rd accused, it is not improbable that he used the sickle, for some of the wounds found on the head and the body of the deceased were, according to medical evidence, such as could have been inflicted by means of a sickle. With respect to the 4th accused, it suffices to say that it was his having kept the Mahratta girl Savitri (the sister of the town Jamedar Venkoji), that enabled him and his associates to commit with impunity several acts of lawlessness which had the effect of causing trouble and annoyance to the deceased and his wife, and that in all probability emboldened them to commit this atrocious crime. The nature of the crime committed and the absence of extenuating circumstances of any kind, render it impossible to entertain any idea of clemency towards any of the accused. If however, for any reason, it is considered expedient that the powers vested in Government by Section 401 of the Criminal Procedure Code should be exercised in favor of any of the accused, I would suggest that it be exercised in favor of the 3rd accused, who had no personal interest in the land dispute that existed between the party of the deceased on the one side and the 1st and the 4th accused on the other, and who joined in committing

committing the crime, simply because, he was a close intimate of the latter.

Sd-, P.S. Krishna Rao,

17th September 1913. Chief Judge.

'Copy-'

Registrar. Chief Ct.

P.T.O.

[G. R. S. 12]

General and Revenue Secretariat.

Serial No.

File No. 76 of 1913-14

Subd with the unofficial opinion of the Chief Judge - pages 10 to 12.

Rq. -116

20/9/13

Dr Secy

Re Subm'd with reference to para 13

Secy 20/9

Dewan through 1st Consultation

Dy Secy 20/9

1. The Ld Chief Judge says that the 3rd accused person's sentence may be commuted. The fourth accused is a young man of 22, and I think that that may be taken to turn the scale slightly in his favour.

2. I have nothing to say against the correctness of the view taken by the 2nd Councillor and the Ch Judge on the effect of the evidence against the prisoners. But my recommendation is founded on a different principle from what they apparently apply. All the proper objects of punishment for crime will be quite

NOTE—Contn. sheet.

GPE—65,000—17-6-12.

adequately served by hanging two persons and Consigning three others to lifelong imprisonment. I am not an adherent of the retaliatory theory of punishment, and in exercising the prerogative vested in him by law, His Highness is not bound to follow the same rules and to take the same view of a case, as if he were sitting as a Court of appeal over the Chief Court.

21 I therefore with great deference adhere to my previous view.

25/9/13

5539
27-9-13

Draft 27/9 2 With reference to para 13. Draft approved 27/9 SPM

15

Submitted to His Highness.

These papers relate to the memorial addressed to His Highness by the marginally noted persons, praying for the remission of the sentence of death passed on the first four of them for the offence of murder and of transportation for life passed on the last named Hafiza Bi for the abetment of the murder.

1st accused Khalandar Sab.
2nd accused Dastagir Peer.
3rd accused Havaligowda.
4th accused Sheik Mohadeen.
5th accused Hafiza Bi.

2. The facts of the case are stated in the judgment of the Sessions Judge in Hassan Sessions Case No.5 of 1912-13 and in the office notes, pages 1 - 6.

3. The Chief Court in confirming the conviction and sentences of the lower Court, remark that the murder was a particularly brutal one, and that there are no reasons why appellants 1 to 4 should not suffer the extreme penalty of the law.

4. The First Councillor is convinced of the truth of the case and the propriety of the convictions. But he thinks that if any grounds can be discovered to justify a difference being made among them, it is worth saving some waste of life. He states that the 1st and the 4th accused seem to have been the original aggressors in the land dispute which seems to have culminated in the crime; that the 2nd and the 5th accused seem to have actively engaged themselves to get the deed done; that the first two accused caught the deceased and dragged him away from the road and the 2nd gave the first blow; and that the other two seem to have played a subordinate part. He is therefore of opinion that in the case of the 3rd and the 4th accused Havali Gowda and Sheik

Mohadeen, the sentence of death may be commuted into one of transportation for life and that the memorial of the others may be rejected.

5. The Second Councillor is not, on the other hand, prepared to commend the case of any of the prisoners for mercy. In his opinion, all the first four accused seem to be equally guilty of this diabolical murder and, in the absence of any extenuating circumstances, the sentence awarded in their case is well deserved.

6. Owing to the importance of the case as involving the lives of 4 persons, I thought it necessary to have the views of the learned Chief Judge also recorded. He states that there are not adequate grounds for making a distinction between the case of the 1st and 2nd accused on the one hand and the 3rd and the 4th on the other, and for reasons stated by him, he is of opinion that the nature of the crime committed and the absence of extenuating circumstances of any kind, render it impossible to entertain any idea of clemency towards any of the accused. If, however, for any reason, it is considered expedient that the powers vested in Government by Section 401 of the Code of Criminal Procedure, should be exercised in favour of any of the accused, he would suggest that it be exercised in favour of the 3rd accused for the reasons explained.

7. The First Councillor in adhering to his previous view, remarks that on the effect of the evidence against the prisoners, the view taken by the learned Chief Judge and the Second Councillor are correct, but that his recommendation is founded on a different principle. He states that all the proper objects of punishment for crime will be quite adequately served by hanging two persons and consigning three others to life long imprisonment, and that, in exercising the prerogative vested by law, His Highness is not bound to follow the same rules and to take the same view of a case as if he were sitting as a Court of appeal over the Chief Court. He adds

that the young age of the 4th accused may be taken to turn the scale slightly in his favour.

8. I agree with the First Councillor in his view that no object is gained in subjecting all the four persons to the extreme penalty of the law. The learned Chief Judge is not quite against the commutation of the sentence on the 3rd accused, and the case of the 4th accused, who is a mere youth, also seems to deserve some consideration.

9. For the foregoing reasons, I recommend that the sentence of death passed on the 3rd accused Havaligowda, and the 4th accused, Sheik Mohadeen, be each commuted into one of transportation for life, and that in the case of the three other prisoners, the memorial be rejected.

M. Krishnaraja -
/ 31 Oct. 1913 -

P.T.O.

Record of Cases submitted for the Orders of His Highness the Maharaja

Subject.

Memorial of Khalander Sab and four others accused of murder and sentenced, the first four to death, and the last to transportation for life, praying for mercy.

).No.73 dated 2nd October 1913.

308

Order.

I agree with the Dewan.

KRAW

2/10/13

Secretary

2.10.13

RC

PB III

25

4/10

4/10

Drafts

SPA 4/10

R. S. 12]

General and Revenue Secretariat.

(15) File No. 76 of 1913-14

Serial No.	
	Subd with two drafts. Kg.-116 11-10-13
	Dy Secy) Drawer) SDL 13/10 Dy Secy of Law 14/10/13 Draw 16/10
	Issue SDL 15/10
2	To The Registrar, Chief Court No/ 1199 Dy 18.10.13 Forwards for information of the Judges of the Ch Court and for communication to prisoners Khalander Sab and four others, a copy of the order passed by HH the Maharaja on the prisoners' memorial praying for mercy

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

No. 818/71 Encls: 2 Records.

Bangalore,

Dated 19th August 1913.

From

THE REGISTRAR OF THE
CHIEF COURT OF MYSORE.

To

THE SECRETARY TO GOVERNMENT,
GENERAL AND REVENUE DEPARTMENTS.

Sir,

I am directed to forward a memorial addressed to His Highness the Maharaja by Khalandar Sab and four others accused in Hassan Sessions Case No. 5 of 1912-13 on the file of the Sessions Judge of Mysore Division and appellant in Criminal Appeal No. 92 & 95 of 1912-13 on the file of this Court.

The entire record of the case is herewith forwarded.

I have the honor to be,

Sir,

Your most obedient servant,

Registrar.

GPB—1,000—16-8-12

Sml 76 of 76-13-1

(2)

To

His Highness The Maharaja of Mysore

~~in Council~~.

The humble Memorial of :-

1. Khalander Sab.
2. Dastigire Sab.
3. Havali ~~Sab.~~ Gowda
4. Shaik Mohideen.
5. Hafiza Bi. (Female)

convicted of Murder under section 302 I.P. Code., by the Sessions Judge of Mysore Division in Hassan Sessions Case No. 5 of 1913-14 and sentenced to death, the said conviction and sentence being comfirmed by the Chief Court of Mysore in Criminal Appeals Nos. 92, 95, and 114 of 1912-13.

Most respectfully sheweth:

That the Sessions Judge has convicted them of murder of one Chinnalingiah in Hassan on the night of the 14th of January 1913 and sentenced them all to death and the Chief Court has confirmed the said conviction and sentence in its entirety.

2. That the only material evidence on which both the Sessions Judge and the Chief Court have proceeded is the evidence of one approver Ninga, and a servant of the deceased's mother-in-law called Kunta.

3. That the circumstantial evidence adduced by the Prosecution is of very flimsy nature.

4. That the circumstances under which the body of the deceased Chenna Lingiah were found-go very much to suggest that the murder was committed by some one else other than the accused and the corpse was dragged from near the 1st culvert on Hassan Saklaspur Road as shown in the plan exhibited in this case Ex P 8 and thrown in the wet fields near the 2nd accused Dastagiri Sab's house.

5. That this circumstance that the body was dragged

from a distance of about 80 yards as deposed to by the Amildar Mr Rajagopalachari who conducted the investigation as head of the Taluq Police (P.W. 23) goes by itself to show that Dastagiri Sab the 2nd accused would hardly have been so foolish and absolutely wanting in ordinary caution, as to drag the corpse towards his house and keep it in the fields close to his house-particularly when there is a big ravine near by, where the body could easily have been thrown in-without exciting any suspicion against any body.

6. That the circumstantial evidence analyzed briefly amounts to this; that some time in the month of May 1912, 1st accused and 4th accused had leased a field from one Chinnamma who was in possession and enjoyment of a land for a considerable number of years and that when they with the aid of coolies ploughed the land they were obstructed by the deceased, his wife, his mother-in-law a dancing girl-and her paramour Shamachar; that on this account there were some assault cases between the parties ; that, on account of the said land, petitions to the Police and the Amildar were preferred about 6 in number by the deceased, his wife, his mother-in-law and Shamachar; that all these petitions Exhibits P3, P4, P9, and P12 are directed not merely against the 1st and 4th accused but against others, and they are all substantially to the effect that they obstructed in taking possession of the field which was owned by one Chinnamma.

7. That on account of these disputes , the 1st and 4th accused-the lessees-left off ploughing the said land from May 1912- as the deceased's relatives themselves testify-, that accordingly, on account of the said land, the accused could not still on 14th of January 1913, continue to bear animosity towards the deceased and his relatives-when the accused had absolutely no interest in the land in dispute-, that undue importance was attache d to these petitions, by the Amildar and the Police when they discovered the body of the deceased Chenna Lingiah

on

on 15th January 1913-that the Police, taking the clue from these petitions and the statements of the deceased's mother-in-law Thimmamma, his wife Putta Lakshamma and Shamachar, began to build a theory that the accused wer e responsible for the murder of the deceased.

8. That these accused had no motive whatever to commit murder of Channa Lingiah, since they had no advantage-material or pecuniary- to gain by killing Chenna Lingiah.

9. That, besides, utter absence of motive to commit this horrible deed, on the part of the accused, the method adopted in the investigation of the case by the Amildar and Venkoji Rao-the Police Jamadar- afford plenty of room to suspect the veracity of Ninga, the approver,-and Kunta and some so called corroborating witnesses.

10. That from the evidence of the approver which will be found on PP. 16, 17 and 18 of the printed book,-it is perfectly clear that he was not yet very friendly with the accused in as-much-as he was only a few days an occupent of the shed close to the 2nd accused's house; that it was hardly likely that they, the accused, if they intended to commit murder, would take the said Ninga into confidence, and that there was no necessity whatever for them to secure the assistance of the approver Ninga, if the accused intended to perpetrate the murder they are charged with-four of them being more than enough to finish off one man.

11. That the Police Jamadar Venkoji whose niece was in the keeping of the 4th accused Shaik Mohadeen harboured deadly enmity against the 4th accused, and his brothers, and finding an opportunity to wreck his vengance on them for this standing disgrace and insult to his family caused to himby 4th accused keeping his niece afforded itself in as much as the names of the 4 accused and his brothers were mentioned in conjunction with others by Shamachar, Thimmamma, and Putta Lakshmamma-the wife of the deceased Channa Lingiah- at the inquest held on 15th January 1913, began to work up the case, having for its foundation the

the enimity and ill-feeling disclosed in the petitions above referred to between the deceased Channa Lingiah, Shamachar, Thimmamma and Putta Lakshmamma, and the accused and other peopleof Chikka Madiganhalli.

12. That the said Jamadar Venkoji dropped all the names of others who were principally referred to in the various petitions, and worked up the case, getting the approver Ninga to his side-against the accused only.

13. That the approver Ninga an ignorant rustic who was living in close proximity to the spot where the ~~corpse~~ corpse of the deceased lay, was threatened and prevailed upon to make a confessional statement which is marked as Exhibit P1.

14. That Ninga the approver, according to his evidence, was never brought to the notice of the Amildar 23P.W till the morning of the 17th idem when the Amildar casually met him, seated outside his shed, and he was asked to accompany the Amildar on his way to Chikka Madiganhalli when the Amildar proceeded to search the house of the 3rd accused Havali Gowda, 1st accused Khalandar Sab and Karia 21st witness for Prosecution who produced the cleaver, article No.1 which was identified by the approver Ninga as his.

15. That the approver Ninga was perfectly innocent of all knowledge of the murder is evident from his conduct as explained by him in his evidence which is hardly consistent with that of a man who had taken part in an outrageous murder as the one the accused have been charged with- Ninga the approver went home and retired to bed without the slightest compunction of conscience, resumed his work as a carpenter as if nothing had happened-never did trouble himself to find out how the corpse of the deceased was disposed of, although he saw the 2nd and 5th accused and when the"phukara" about the discovery of the corpse of the deceased in the fields closeby, was heard, the said approver, went near the corpse, was present when the inquest was held- and yet, although a resident of the

6

locality, was not examined at the Inquest by the Amildar,- and conveyed the corpse to the Hospital at the instance of Shamachar, and returned home, saw the 2nd accused and 5th accused, and yet, neither he or they ever troubled themselves about knowing how the dead body was disposed of-or what happened to the dead body-, that he remained quiet in his shed without being in any way troubled in mind although on the morning of that day, he says out of fear, he gave the cleaver article No.1 which was used for murdering the deceased, away to Karia 21st Witness for the Prosecution who was not a friend of his nor a man who ever kept anything belonging to him - that he remained at home till Thursday when he was sent for by the Police - that he remained with the Police till the time of his arrest on the 17th evening at 4 P.M., and thereafter in the Town Police Lock-up ~~was there in the Lock-up~~ separated from the other accused till he made his confessional statement-solely and entirely under the control of Jamadar Venkoji- and that a few days after the confessional statement was recorded before the Magistrate, he was made an approver and examined as 1st Witness for the Prosecution.

16. That these circumstances referred to in the previous para leading up to the confessional statement recorded before a Magistrate are sufficient to throw a considerable doubt upon the veracity of the confessional statement Exhibi P 1 .

17. That it is inexplicable why the Amildar who conducted the investigation of the case should have refrained from examining Ninga who was present from the moment that the corpse was discovered at noon on the 15th of January 1913- even when his name was mentioned by Nimbojee Row brother-in-law of Jamadar Venkoji Row on 16th evening- not even when Nimbojee Row and Bette Gowda were examined on 16th idem- nor on Friday morning when Karia 21st P.W., was produced before the Amildar on 17th. ~~morning~~.

18. That the approver's story that he made a confession to the Amildar before he went with him to the house of

Karia on 17th Morning - suggests that Ninga the approve-r was being tutored to make a statement containing particulars elicited from the witnesses examined before Ninga's confessional statement was recorded on 2oth January 1913.

19. That the conduct of the Police in getting Ninga the approver to make a confessional statement before the Magistrate under section 164 Criminal Procedure Code and then in getting him made an approver under section 337 Criminal Procedure Code- is entirely oppsed to the Policy of the Law as will be evident from a reference to the order passed by the Government of Madras on the recommendation of the Hon'ble the Judges of the High Court of Judicature, Madras, published as G. O. 17th December 1887 No. 2883 Jud. Madras rules No 56 PP 25-32 wherein it is clearly stated in para 5 of the Order sub clause (3) "that if in any case the Police desire to use against others the information given to them by a person in custody they should apply for sanction to make that person an a-ppfover and a statement under section 164 Criminal Procedure Code should not first be taken from him."

20. That it is clear that the very object of the enactment section 337 Criminal Procedure Code to grant pardon and make the accused an approver on condition of his disclosing all the matters connected with the offence with whih he is charged is defeated in as much as the previous confessional statement recorded would prevent him when examined as a witness from diverging ever so little, for fear of pardon being forfeited and the confessional statement being use against him.

21. The humble petitioners therefore most respectfully submit that the evidence of the approver- given after the confessional statement was recorded- is opposed to the aforesaid order having the force of Law at least so far as British India is concerned and should be therefore consi-

dered

inadmissible besides being utterly worthless and unreliable.

22. That there are numerious decisions of the Indian High Courts to show that it is extremely unsafe to base a conviction on the eviden-ce of an accomplice or approver-unless it is corroborated in material particulars that section 114 illustration (b) provides that the Court may presume that an accomplice is unwor thy of credit unless he is corroborated in material particulars that the only corroborating evidence if any is that of Kunta, the servant of the deceased's wife and mother-in-law, that the corroboration from the evidence of Kunta is no corroboration at all, in as much as his evidence conflicts with the evidence of the approver in many important particulars.

23. Kunta's evidence is wholly unreliable, first and foremost as he was at the time of giving evidence still in the employ of the deceased's wife, Putta Lakshmamma, Shamachar and Thimmamma- who are enemies of the accused according to their own showing and who naturally must have been tutored to give evidence to support the story of the approver.

24. That Kunta who is alleged by the Prosecution to have accompanied the deceased on the 14th night is according to the statements made by Putta Lakshmamma, Shamachar and Thimamma at the Inquest held on the 15th of January 1913 over the body of the deceased- which constitute as it were the first information Report- Exhibit P15 Inquest proceedings found on page 58 lines 13, 14, 15- Thimamma says- "when I asked Kunta where the deceased was, he said, "he(Chenna Linga the deceased) told me he will come after it was a little dark because somebody may untie and let go the cattle stealthily". That this being the first statement supposed to have been made by Kunta, as stated by Thimamma- ought to be preferred to the later statements made by these witnesses before the

Committing Magistrate- and the Sessions Court. That the subsequent statements made by these witnesses Viz: Putta Lakshmamma, Thimmamma and Shamachar vide page 39 of the printed book where in line 24 Shamachar says- that Kunta merely said he (Chenna Lingiah is coming behind, P 41 Thimamma a dancing girl the mother-in-law of the deceased, said line 36- " I asked Kunta" where Chenna Lingiah was. He said he would be coming behind Then I told my daughter to give Kunta food. Presently my daughter said that Kunta was not eating his food and was shivering"- That it is perfectly evident that this statement of Thimamma on 31-3-13 is at variance with the statement first made by her on the 15th of January 1913- at the Inquest as found in Exhibit P15 lines 11-15 on P58 of the printed record.

25. That in the course of argument when this great divergency was pressed upon the attention of the Judges of the Chief Court, Messers Justices Chandrasekara Aiyer and E.H. Wallace, Mr Justice Wallace rejoined by remarking that the accused's Counsel had no right to refer to that statement without confronting the witness Thimamma with that statement, that the learned Judge by preventing reference being made to such an important discrepancy, as it is perfectly evident, that if the first statement of Thimamma is accepted, Kunta was not with the deceased at the time of the murder ignored the principles laid down by experienced Judges of the High Court of Madras Sir Ralph Benson and Mr Justice Abdur Rahim reported on p 391 of volume 4 Indian Cases, Criminal Appeals Nos. 669 and 672 of 1909, disposed of on 29-11-1909. In re Muthan Papaya- that the Sessions Judge in conducting future trials should bear in mind that it is his duty to sift the facts if this is not sufficiently done by the Pleader appearing for the Prosecution and Defence-" that the learned Judges of the Chief Court have entirely ignored this inconsistency from which alone Kunta's evidence must be rejected

10

and its corroborative value being thus lost, the whole case against the accused would rest on the uncorroborated testimony of the approver Ninga alone. Apart from this glaring inconsistency referred to above, from which it can be inferred that Kunta was not with the deceased when the deceased was alleged to have been dragged to the fields from the road side- there is another statement found in Exhibit P15 Inquest Report column 3 P56, "By whom last seen alive where and when, and whose company- Balagai Kunta of Thodda Madiganahally at Chicka Mandiganahali on the evening of 14-1-13. That the Amildar who held the Inquest could not have made that entry in the Inquest Report unless he received the information from Kunta himself- although the Amildar says, in his evidence, that Kunt was not to be found till next morning (vide line 41 P34 of Prosecution Witness No.23)- but the inference that Kunt was present at the time of Inquest is greatly probabalized by the evidence of Kunta himself, 5th P. W. p 22 printed record "what happened was that I was tending my cattle and I saw people crowding and went near and then went back near the corpse Shamachar, Thimamma, and Putta Lakshmamma were present". That in the face of this statement can it be said that there was difficulty in securing Kunta nad getting his statement recorded. That on the contrary- the inference is irresistible that Kunta was with the Police and not produced before the Amildar- on purpose to get him to make a statement- which might be useful as a basis to build the theory of corroboration of Ninga who was all the time with the Police.

26. The humble appellants beg therefore most respectfully to submit- that Ninga who was a resident of the locality where the corpse was discovered, should not have been examined although he was with the Police from the very outset and that Kunta though easily available and could have been produced before the Amildar Magistrate- are circumstances which go to suggest that Ninga and Kunta are the two persons that the Police had under their contro

to build the theory of the Prosecution that the accused were the murderers.

27. Besides the highly suspicious conduct of the Police with regard to the manner in which the Police kept back Ninga without examining him before the alleged corroborating witnesses like Kunta, Kabbina Ramanna, and Bettey Gowda 6th and 7th Witnesses for Prosecution , there are discrepancies in material particulars between the evidence of the approver and Kunta the corroborating witness, on which alone the Sessions Judge and the Chief Court have convicted the appellant petitioners of murder.

28. The following are among the principal discrepancies in the evidence of approver Ninga and Kunta the principal witness on whose corroboration the Chief Court and the Session Judge principally rely for adjudging the accused guilty of murder:-

(1) According to the approver, the deceased was dragged from the road direct to the fields where he was murdered- Kunta says that the accused was dragged into the 2nd accused's house from the back door of his house-vide D1.

(2) Approver says that when the deceased was caught hold of on the road, the 3rd accused had a sickle in his hands; Kunta says that he had a club and threatned that he would break his legs with it if he mentioned the matter to anybody.

(3) Approver says that on P 18 line 26- Dasthagiri sab first caught hold of Channa Lingah from behind. He caught him on the right side. Neither Channa Lingiah nor Kunta called out or remonstrated when Channaiah was caught hold of line 33. As soon as Dastagiri ("nd accused) caught hold of Channiah the first accused also seized him and as soon as the first accused [redacted] seized him, the 2nd accused clapped Channaiah's

own Panchay over his mouth and held it fast. The first accused went and caught hold of him from in front and threw his arms tight around him. We pushed him along off the road at a place between my shed and a tree- Kunta 5th Witness for Prosecution in his evidence on p 21 line 11 has stated that 1st and 2nd accused held him just by the cloth- line 46. Then they seized him and abused hi-m and clapped his cloth over his mouth The same Kunta before the Committing Magistrate on p 79 line 5 all the accused were near the cart in front of his house. Mandi Sab held Channiah saying (where are you goi-g), "Let me have connection with your wife" Channiah stopped and asked why. Mandi Sab the 4th accused held Channiah fast in his arms and dra-ged him into the house by the back door."

29. That this statement of Kunta before the committing Magistrate that it was Mandi Sab Viz the 4th accused that dragged the deceased and Ninga the approver says that, 1st accused and 2nd accused put their arms round and the approver and 3rd and 4th accused pushed the deceased from behind- that this glaring discrepancy between the statement of the approver Ninga and Kunta in this respect- could not have possibly occurred if both Minga and Kunta were present at the occurrence as deposed to by them.

30. That the other corroborating witnesses mentioned are Kabbina Ramanna, Akkiamma, and Bette Gowda-6th P.W., 4th P.W., and 7th P.W.,

31. That 6th P. W., Kabbina Ramanna who is called

who is called to corroborate the approver has stated in his deposition found on page 22 of the printed book - line 34- that he was about 12 or 15 maroos this side of the nearer culvert when he heard some one cry "Sathenal lappa" and then there was silence; Ninga the approver says that the deceased cried out "Ayappa" when the 2nd accused hit the deceased with the cleaver -article No.1- in the field, which is about 150 yards away from the road and that he was told to go back to the culvert and see if any body was comming; that when he got back near the road by the tree, he saw Kabbina Ramanna passing along the road, that Kabbina Ramanna was then nearing the culvert." That it is impossible to conceive that Kabbina Ramanna who heard the cry "Sathenallappa" when he was about 12 maroos from the near culvert should still be near the culvert when the approver Ninga should have been able to cover the distance of 200 yards from the scene of occurrence and be in time to hear Kabbina Ramanna soliloquising as deposed to by him, not to say- of the entirely different cry heard by Kabbina Ramanna and as spoken to by him namely "Sathenallappa" and the cry of "AYayappa" spoken to by the approver; that notwithstanding this discrepancy and the extreme improbability of Kabbina Ramana having been seen by the approver Ninga if either version is taken, [illegible] the Sessions Judge and the Chief Court has fixed some corroborative value on Kabbina Ramanna's evidence, to conclude that Ninga the approver's Statement about the murder must be accepted; that even then, the effect of this evidence, although it may be accepted as corroborating Ninga's portion of the story in regard to it cannot have any value so far as the accused are concerned since there is nothing in Kabbina Ramanna's evidence against them . There is one important point which has not been noticed by the Chief Court is Kabbina Raman statement that he saw no boy running by the road at the time which he would assuredly have done if the story of Kunta that he was threatened by Havali Gowda, and that

he ran straight by the road is true.

32. That with reference to the evidence of Akkamma 4th Prosecution witness the wife of the 3rd accused, the Sessions Judge has accepted her version given by her before the committing Magistrate marked as Exhibit P6 as true and that it corroborates the story told by Ninga the approver- Akkamma's e-vidence Exhibit P6 is to the effect that when she came near the 2nd accused's house she found the accused one and two near the house and asked them what became of her husband and afterwards, approver Ninga and three others came from the field side and that her husband came from the toddy shop drunk.

33. Approver Ninga on the contrary says that there were six persons in all including himself concerned in the murder; according to Akkamma there were eight persons in all, that accused 1 and 2 went inside, Ninga and three others came from field side- the approver further says that when Ramanna was still on his way to the Mutt and passed only a few fathoms from the near culvert he saw Akkamma come from the other side and if Ninga's story on this point be true, Kabbina Ramanna must necessarily have seen Akkamma coming along, whereas Kabbina Ramanna in his evidence- says that he saw or met no body on his way. That this evidence of Akkamma given before the Committing Magistrate notwithstanding her retraction at the Sessions Court, and its entire discordance with the story of approver regarding the different incidents related by Akkamma and the approver has been made use of as corroborative piece of evidence to believe the story of Ninga.

34. As regards the other piece of corroboration relied on by the Chief Court and the Sessions Judge- to show that Ninga the approver's story is true, the learnd Sessions Judge and the Chief Court have relied upon the evidence of Bette Gowda - 7th P. W.- whose evidence will

discredit on the approver's testimony in the light of the numerous discrepancies and inconsistencies in his evidence and the corroborating witness Kunta is the basis on which the Chief Court has proceeded to condemn Your Highness's humble subjects and deprive them of their valuable lives- when they are supremely innocent of the charge of murdering Channa Lingiah- against whom the humble appellants had no motive to perpetrate the outrageous murder.

38. That in addition to the only circumstance suggested by the Prosecution and accepted by the appellate Court namely the land dispute on account of which petitions were filed by the deceased Channalingiah his wife Putta Latchmamma Thimmamma a prostitute, the deceased's mother-in-law and her paramour Shamachar, not only against the 1st and 4th accused but against several others there is another motive suggested by Puttalakshmamma and Shamachar- 26 and 27 P.W.,

39. The two witnesses have suggested that on one occasion, a few days before the murder, Channa Lingiah and Shamachar were going from Hassan to Chickmadiganahali the deceased was abused by the 2nd accused and his mother the 5th accused in a most shameful manner, the cause alleged being that the 2nd accused suspected the deceased to have set fire to their ragi stack. That this alleged reason for pouring volleys of abuse on Channa Lingiah on his way in company with Shamachar to Chickmadiganahali- is proved to be false:- (1) by the evidence of the Police Jamadar Venkatasubbiah 18th P.W. who received a complaint on 31st December 1912 in which the 2nd accused has stated that he suspected only Dyave Gowda and no body else-, that accordingly there could have been no reason for the 5th accused and the 2nd accused to behave in the manner alleged by Shamachar and PuttaLakshmamma That apart from this Shamachar in his evidence P39 line3- fixes the day on which the 5th and 2nd accused are allegd to have abused the deceased and threatened to murder him

as the day following the destruction of the 2nd accused's ragi stack which according to D2 filed through filed through the 18th P.W took place on 31st December 1912, that there can be no doubt about this date in consequence of Shamachar's evidence that this incident took place about 10 or 12 days before Channa Lingiah was murdered and the day after the 2nd accused ragi stack was destroyed by fire. It then follows that the story related by the deceased's wife Putta Lakshmamma 27th P. W that on Monday a day before the murder line 26 -35 on P43 her husband was looking very depressed and that he told her that the previous day not 15 days previously the 2nd and 5th accused had accused him of setting fire to that stack, and that the 2nd accused had quarrelled with him and had threatened to murder him and ravish his wife" cannot possibly be true, that the cause of her husband's despondency must be sought in another quarter, probably in that she who was pregnant did not like to accompany her husband to Ranavar where he was employed as Postman and that the deceased had heard reports about the infidelity of his wife who after all was living with her mother an avowed prostitute openly living in concubinage with Shamachar.

40. The appellants further beg to submit that the cause for preferring Exhibit P2 and posting it and creating evidence before hand by securing posting certificate Ex P5 is most mysterious. Never before in previous applications about 5 in number was such postal certificate secured. These other applications exhibits P3, P6, P12, and P9 were preferred directly to the officers that they were intended for and not posted; that it is extraordinary that if the deceased Channalingiah were so apprehensive of danger to his life as is alleged, the deceased a literate man would not have rested satisfied with mere posting of Exhibit P2. Besides there is nothing in evidence adduced to show that the accused were at any time aware of any one application ~~and~~ supposed to have been filed by the deceased and his relatives. Strangely enough they seem to have been satisfied with mere filing of petitions and not followed them up. The conduct of the deceased's wife ,

his mother-in-law, and Shamachar gives a wider room for suspicion to suggest that they have been trying to secure evidence before hand, of alleged illfeeling between the accused themselves to be made use of when a seasonable opportunity presented itself. The deceased Channalinga was merely a tool in the hands of his wife, his mother-in-law and Shamachar who could get him to do any thing sign any petition prepared by them.

41. That the reason for preferring Exhibit P2 and posting it could never be the reason alleged - namely threat to murder Channa Linga on the part of the 2nd accused. In addition to the grossly incinsistent statement made by Shamachar about the time the alleged incident is said to have taken place, it is extremely unlikely that if the deceased were so frightened of his life, he would have made bold to go to Chickamadiganahalli and come back in company with a little boy Kunta a stripling of 15 and pass by the house of the 2nd accused on the night of the murder about 10 P.M.

42. There is another circumstance preferred to by Putta Lakshmamma in her evidence on page 43 were she says that the accused 2 and 5 tried to enti-ce her into their house with soft words and that on that account there was an open quarrel between her and the accused 2 and 5 and that her mother Thimmamma and Karia 21 P. W were aware of it. That in this respect there is absolutely no evidence except the IPSE DIXIT of Putta Lakshmi- and that her mother Thimmamma and Karia who according to her were aware of the incident never say a word about it.

43. The appellants therefore beg to submit that there were no adequate motives to actuate the accused to commit the horrible murder.

(1) The land in dispute- the only parties interested being - Channamma- ChannaLingiah's

uncle, Hanumay Gowda's mother-in-law, the accused 1 and 4 who were mere lessees of the land having been obstructed in ploughing the land in question in the month of May 1912 had ceased interfering with the land and the land as a matter of fact according to Kunta, and Thimmamma and others was lying uncultivated. The accused therefore could have no interest whatever in the said land nor had they any advantage material or pecuniary to gain by killing Channalingiah.

(2) The motive suggested by the prosecution that 2nd accused wanted to ravish the deceased's wife- is not supported by any evidences not even the mother Thimamma nor Karia who were supposed to be present when the deceased's wife Putta-Lakshmamma resented the overtures made by the 5th and 2nd accused not saying one word about it which they would most assuredly have done if the incident were true.

(3) The setting fire to the accused's ragi stack - The accused never suspected Channa Lingiah nor Shamachar nor any one of them as is clear from D2.

(4) The incident Viz- that the deceased and Shamachar when going to Chickmadiganahalli were abused and threatened by the 5th accused and 2nd accused is not proved owing to the variance between Shamachar and Putta Lakshmamma in respect of the time when it occured- and that Shamachar pacified Channa-Lingiah and they went their way without Shamachar giving any more thought to the same, goes to show that if the incident did really occur, it occurred about 15 days before the murder-and that they did not give any serious thought to the same.

(5) The petition Ex B2 does not make any definite reference to the alleged incident which according to Putta Lakshmi occurred on the day previous and

which made her husband look ver much dejected. The fact that there is no such reference in the said petition and that it is a general complaint against some of the accused and other people of Chickamadiganahalli falsifies the story of any such incident.

(6) There is another most peculiar and extraordinary feature in this part of the case- that if the deceased and his wife were so much in dread of the said deceased being murdered, it is impossible to conceive that when Putta Lakshmamma came to know from Kunta that her husband had not come- was coming alone- behind- she did not feel any anxiety about his safety and went to sleep and did not even stirred the next morning but Thimamma sent Kunta the next morning to Chickamadiganahali to enquire after Channa Lingiah, and that notwithstanding what she says in her evidence on P43 line 50- that Kunta informed her when she asked him again that he had left her husband near the culvert and that perhaps he had turned back and gone to Madiganahalli- That this piece of news could most assuredly if Puttalakshmamma be a human being and was in constant fear of danger to the life of her husband have stirred up the whole house and they would have gone in quest of Channalingiah.

44. The appellants therefore humbly beg to submit that no adequate motive for the murder of the deceased has been made out against the accused and both the Sessions Judge, and the Chief Court relying on the evidence of approver which at best, even if was given under circumstances affording no room to suspect that any influence was brought to bear upon him- which is not the case here - as explained above- is presumed in law under illustration (2) of section 114 of the Indian Evidence Act to be un-

unworthy of credit and the evidence of boy Kunta a stripling of 15 in the employ of the deceased mother-in-law have condemned the first four appellants to death and the fifth an old woman of about 60 or 70 who can hardly see anything during the day much less during the night to Transportation for Life. The learned Judge Mr Justice Wallace who wrote and delivered the Judgment observes that the lengthy argument of the Pleader for appellants 1, 2, an 4 has not had the effect of showing why the approver should not be believ when Legislature itself has in so many words- expressly stated that the approver's evidence is presumed to be unworthy of credit.

45. The evidence of Kunta- apart from its being open to the attack that he must have been tutored in as much as he was still in the employ of the deceased's mother-in-law is hardly credible- without adverting to the discrepancies between his evidence and the approver's evidence as above stated- the story that Kunta was so frightened of the threat of Havali Gowda 3rd accused that he would murder him if he disclosed anything to any body- and therefore he refrained from telling his mistress Thimamma or his master Shamachar when he got home when he had no reason to apprehend any dager from Havali Gowda or any body- when he was under his master's roof- not even the following day although he was not frightened to go alone when sent by Thimamma to Chickamadiganhalli in search of Channalingiah and come back with the information that the deceased Chadavoos and Kambli were foun in the house in Chickmadiganhalli and not himself- and that he even then did not inform Thimamma, or Putalakshmamma is too absurd for any one to give cre-dence to. Besides, there was nothing said at the inquest as can be gathered fro Exhibit P15 about Kunta coming home shivering as if he was suffering from ague, or that he refused to eat and drink, and went to sleep without food. This story about Kunta shevering with fear- when he came home- was never mentioned- till a late stage, when the witnesses gave their evidence before the committing Magistrate.

46. That this is the kind of evidence-totally unreliable and of ver flimsy nature- on which the lives of Your Highness' humble appellants have by the highest Judicial tribunal- The Chief Court of Mysore- been condemned to for forfeiture.

47. The 5th Appellant Hafiza Bee sentenced to transportation for life- an old woman of about 60 or 70, begs to submit that in the nature of things it is extremely unlikely that the old woman would have been deputed by the accused to give them a signal of Chicklingiah coming to near the spot where the accused are alleged to have been lying in wait,- nor is it likely that she would be the person deputed to wash the cleaver No. 1,-at night and wash it so well as not to leave any trace of human blood on it.

48. The humble memorialists beg to submit that the Hon'ble the Chief Court- has disposed of all the arguments advanced by their Counsel with a simple observation- that the discrepancies pointed out are trivial- and that they do not detract the value of approver's testimony.

49. The humble appellants respectfully pray that His Highness may be pleased to take into consideration all the arguments advanced above, and also beg to be permitted to select from among the numerous cases decided by the various High Courts in India only one reported in I. L. R. Calcutta series 36 Cal 629- when their Lordships of the Calcutta High Court have discused at considerable length the various discrepancies between the approver's evidence and the evidence of other witnesses, not ignoring a discrepancy like- 'The deceased was attacked on the road side- and the deceased was attacked in the fields'" below"- a discrepancy which is viewed by their Honors- the Judges of the Chief Court as trivial and not entitled to any consideration,- That the case quoted above will serve as a very good example of the great caution that has to be exercised before a Court can accept the approver's testimony. That the case under reference

was very much stronger the circumstantial evidence, very strong, motive fully made out and yet Their Lordships of the High Court refused to accept the evidence of the approver and the corroborating witnesses and acquitted the accused of the charge of murder. Another case which the humble appellants beg leave to invite Your Highness' attention to is the Judgment of Their Lordships of the Privy Council- in ~~and~~ the Pandi Murder case. The Judgment is not yet reported in the I.L.Reports but it is found published in all the leading Newspapers of the day,- in the issue of the 10th August 1913,- Their Lordships of the Privy Council observe "In regard to the evidence and confession of an informer, they said, that he was never asked either by the Court on Counsel on either side how the confession came to be made or what inducement if any were held out to make it". In this case disposed of quashing the conviction of murder and sentence of death passed by the Sessions Judge of Tanjore and confirmed by the High Court of Madras, the existence of higher appellate Court in the Privy Council saved the life of the condemned who was sentenced to death on the evidence of the approver and circumstantial evidence. The circumstantial evidence was very strong and the motive for murder clearly made out and yet Their Lordships of the Privy Council, acquitted the appellant holding that it was very unsafe to proceed on such testimony. In this case, motive is not made out, the evidence of the approver is unreliable; the evidence of corroborating witness Kunta, worthless and yet the Chief Court has confirmed the conviction.

50. The humble appellants therefore most respectfully pray, under section 401 Criminal Procedure Code the appellants having no opportunity of appealing to a higher Judicial Tribunal than the appellate Court viz., Chief Court of Mysore. His Highness may be pleased in virtue of the prerogative vested in him as the Sovereign of the State whose subjects the appellants are, that the records may be sent for and their case may be kindly

considered since they declare they are perfectly innocent of the charge of murder for which they have been sentenced to death and tranportation ~~of~~ for life- Since according to the well-known principle it is better than ninety nine guilty escape that one innocent should suffer, the innocents in this case being about 18. 20. 26years old and 3rd appellant avale Gowda being an old man of about 60 years.

51. The humble appellants pray therefore that the sentence of death and transportation ~~of~~ for life passed upon them may be remitted wholly as they are not guilty and perfectly innocent of the charge.

Mark of Pr. No. 7367 7637.

Bangalore 13.8.13

7638. 7368

Mark of Pr. No 7639. 7369

Mark of Pr. No 7370

7371

Marked & Signed before me

Chief Jailor, B.C. Jail

14/8/13

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Monday, the 4th day of August 1913.

P R E S E N T

Mr. Justice K. S. Chandrasekhara Aiyar,

and

Mr. Justice E. H. W a l l a c e .

Petitions of Criminal Appeals Nos: 92, 93 of 1912-13/Referred Case No: 7 of 1912-13, and Criminal Appeal No: 114 of 1912-13 against the convictions and sentences by the Sessions Judge of Mysore under Section 302 of the Indian Penal Code in the case of accused 1 to 4 and under Section 302/114 of the Indian Penal Code in the case of the 5th accused in Hassan Sessions Case No: 5 of 1912-13.

In Cr: Apl: 92 of 12-13.

Appellants.

1. Khalandar Hussain
2. Dastagiri Peer.
3. Sheik Mohadin.

(Accd: 1, 2 & 4).

In Cr: Ap: 93 of 12-13.

Appellant.

Havali Gowda.(Accd: 3)

In Cr: Ap: 114 of 12-13

Appellant.

Hafeeza Bi. (Accd: 5).

J U D G M E N T

1. These criminal appeals are all against the conviction and sentence passed by the Sessions Judge, Mysore, in Hassan Sessions Case No: 5 of 1912-13 on his file. They will be dealt with together, and the appellants will be, throughout this judgment, named by their numbers as accused in the lower court.

2. Appellants 1 to 4 have been convicted of murder under Section 302, Indian Penal Code, and 5th appellant of abetment thereof. The prosecution case is that on the night of 14-1-13 about 9 P.M. they lay in wait for one Channa Lingayya, just by second appellant's house, on the Hassan-Saklespur road, seized him, dragged him into the wet fields by the side of the road and hacked him to death with sickles and choppers. The body of the man was found there next morning covered with incised wounds and there is no doubt from the medical evidence that he was murdered.

3. The important evidence against appellants is that of one Ninga, an approver and one Kunta, a boy of 15 who was accompanying deceased when he was attacked. Ninga, examined as Prosecution Witness 1, describes in detail how the murder was plotted beforehand by the 5 appellants, how they asked him to join them, how he consented as he was under obligations to second appellant, how it was learnt that deceased would be passing second appellant's house that night on his way back to Hassan,, how fifth appellant kept watch, how fifth appellant gave second appellant a chopper (article 2) which he handed on to first appellant, how he (approver) gave second appellant at his request, the cleaver (article 1), how third appellant had a sickle (article)

(article) 3) of his own and fourth appellant had a rope, how fifth appellant gave the signal of deceased coming, how appellants 1 to 4, and the approver seized deceased and dragged him into the fields, how second appellant struck him with the cleaver, and how he (the approver) did not see anything more, as he was sent to the road to watch if any one was coming. There can be no doubt, that if the approver's evidence is believed, appellants have all been rightly convicted.

4. We heard a lengthy argument on behalf of appellants 1, 2 and 4 by their pleader, but were unable to gather therefrom any criticism of any importance on the approver's evidence. A few discrepancies of trivial importance were all that the pleader could put forward. We have carefully read the approver's evidence and there is nothing in itself inherently improbable or partial, or indicating in any way any animus against appellants or any suppression of facts regarding himself. The subordinate position occupied by him during the murder is consistent with his position of dependence on the appellants. The appellants have made no reasonable suggestion why this man should concoct an utterly false story ~~inflicting~~ implicating them in this murder. Nor can we find any credible explanation of the fact that he, before he was made an approver, made a complete confession of the crime, exposing himself fully to the charge for murder, unless his story were in the main true and trustworthy.

5. Further, his evidence is not without corroboration. It is corroborated by Prosecution Witness 5, (the boy of 15 who was accompanying deceased when he was attacked) up to the stage when the appellants and the approver fell upon deceased and began to drag him away. Appellants have not suggested any motive for this witness to give false evidence. The fact that he did not report the matter when after running in fear from the spot he reached deceased's house is adequately explained by the terror instilled into him by the threat of the third appellant. The approver's evidence is also corroborated by Prosecution Witness 6 on the point of his (P.W. 6) going along the road at the time and hearing deceased's cry of distress.

6. The cleaver (article 1) has been clearly proved to belong to the approver. We see no reason to doubt the evidence of the approver that second appellant used it to strike deceased and that, after the murder, fifth appellant washed it and returned it to the approver.

7. It is quite evident from the evidence let in by the prosecution that appellants 1, 2 and 4 had for some months been filled with malice and hatred against deceased and his father-in-law and that both the latter had for some time been apprehensive that their lives were not safe. As fifth appellant

is

is the mother of second appellant and third appellant is a close intimate of first and second appellants, it is not difficult to accept the evidence that they also aided and abetted the other appellants in this matter.

3. The appellants had no defence to offer, and have produced no evidence on their side to rebut the prosecution case. On a careful consideration of the whole case we can see no reason whatever to interfere with the lower Court's conviction and sentences. The murder was a particularly brutal one and there are no reasons why appellants 1 to 4 should not suffer the extreme penalty of the law. These appeals are therefore dismissed.

9. We cannot refrain from pointing out that, in our opinion, the slackness of the local police and magisterial authorities in taking no notice and practical action against appellants on the numerous petitions for protection and assistance put in by deceased and his father-in-law, is in some measure responsible for this murder. Had prompt action been taken on these and a full and proper enquiry held, it is not improbable that appellants would have been deterred from perpetrating such a brutal crime. Petitions were sent to the authorities by deceased, his wife and his father-in-law on at least 5 different occasions

30

Exhibit P12 3-6-1912, Exhibit P4 29-6-1912, Exhibit P3 26-5-1913, Exhibit P9 19-3-1912 and Exhibit P2 14-1-1913 against appellants 1, 2, 4 and others, detailing their apprehensions of violence and no attention whatever seems to have been paid to them. Such conduct on the part of the authorities can only encourage evil-doers to further boldness in crime.

(Sd) K. S. Chandrasekhara Aiyar
JUDGE.

(Sd) E. H. Wallace.
JUDGE.

I.C.C.

'True copy'

Dy: Registrar

87.

31

No. J 1199

MYSORE GOVT. GEN. & REV. SECRETARIAT.

Dated Bangalore.....18.....10.....1903

From

The Secretary to the Government of H. H. the Maharaja of Mysore.

To

The Registrar of the Chief Court of Mysore.

SIR,

I am directed to forward herewith for information of the Judges of the Chief Court and for communication to ~~the~~ prisoners Khalander Sab and four others, the first two ~~under sentence~~ undergoing sentence of death and the last under sentence of transportation for life in the Bangalore Central Jail, copy of order passed by H. H. the Maharaja of Mysore, on the prisoner's memorial praying for mercy

2. The entire records received with your letter No. 818/71 dated the 19th August 1903 are herewith returned.

I have the honor to be,

SIR,

Your most obedient servant,

pk

for Secretary.

Dtd 14/10

K -116

11-10-13

14/10/13

Draft

S.R. 15/10.

In the Matter of a Memorial of

Khalander Sab and four others, praying for the remission of the sentence of death passed on the first four of them for the offence of murder and of transportation for life passed on the fifth for abetment of murder, in Hassan Sessions Case No.5 of 1912-1913.

His Highness the Maharaja

has been pleased to direct that the sentence of death passed on the 3rd accused Havaligowda, and the fourth accused, Sheik Mohadeen, be each commuted into one of transportation for life and that in the case of the three other prisoners, the memorial be rejected.

M. Visvesvaraya

Dewan of Mysore.

Date of Order: 2nd October 1913.

A.V.

GPB--300--15-12-08